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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BOARDS OF TRUSTEES OF THE
SEATTLE AREA PLUMBING &
PIPEFITTING INDUSTRY HEALTH &
WELFARE TRUST, SEATTLE AREA
PLUMBING & PIPEFITTING INDUSTRY
JOURNEYMEN AND APPRENTICE
TRAINING TRUST, WESTERN
WASHINGTON U.A. SUPPLEMENTAL
PENSION PLAN, WASHINGTON STATE
PLUMBING & PIPEFITTING INDUSTRY
PENSION PLAN, PLUMBERS &
PIPEFITTERS INTERNATIONAL
TRAINING FUND, and PLUMBERS &
PIPEFITTERS NATIONAL PENSION
FUND (hereafter referred to as the "Trusts"),
Plaintiff,

v.

BIGFOOT PLUMBING, LLC, a
Washington limited liability company,
Contractor's License No. BIGFOPL911C4,
UBI No. 602901049; and DAYTON
MATTHEW DENNISON and JANE DOE
DENNISON, marital community,

Defendants.

NO.

COMPLAINT FOR BREACH OF
COLLECTIVE BARGAINING
AGREEMENT AND DELINQUENT
CONTRIBUTIONS (ERISA)

COMPLAINT- 1

1 For their complaint, the plaintiffs allege as follows:

2 **I. PARTIES, JURISDICTION & VENUE**

3 1. The Seattle Area Plumbing and Pipefitting Industry Health and Welfare Trust
4 (the “Seattle Area Health and Welfare Trust”) is a trust fund created pursuant to §302(c) of
5 the Labor Management Relations Act of 1947 on February 23, 1954, and subsequently
6 amended, for the purpose of providing eligible employees, dependents, and beneficiaries with
7 healthcare and related benefits. It maintains a principal office in Bothell, King County,
8 Washington.

9 2. The Seattle Area Plumbing & Pipefitting Industry Journeymen and Apprentice
10 Training Trust (the “Training Trust”) is a trust fund created for the purpose of providing
11 education benefits to eligible employees. It maintains its principal and administrative offices
12 in Bothell, King County, Washington.

13 3. The Western Washington U.A. Supplemental Pension Plan and Washington
14 State Plumbing & Pipefitting Industry Pension Plan (the “Pension Plans”) are trust funds
15 created for the purpose of providing benefits for the support of eligible employees after
16 retirement and/or their beneficiaries pursuant to a defined contribution plan and pension plan,
17 respectively. They maintain their principal and administration offices in Bothell, King
18 County, Washington.

19 4. The International Training Fund (the “ITF”) is a trust fund created for the
20 purpose of providing education benefits to eligible employees. It maintains its principal and
21 administrative offices in Alexandria, Virginia, but the contributions owed by employers
22 working in the State of Washington are sent to the administration offices in Bothell, King

COMPLAINT– 2

3400 423 tj051204

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1 County, Washington.

2 5. The Plumbers & Pipefitters National Pension Fund (the “NPF”) is a Taft-
3 Hartley pension plan established for the purpose of providing eligible members and retirees
4 with pension benefits. It maintains its principal and administrative offices in Alexandria,
5 Virginia, but the contributions owed by employers working in the State of Washington are
6 sent to the administration offices in Bothell, King County, Washington.

7 6. The Trust Funds listed above are commonly known as the Seattle Area
8 Plumbing & Pipefitting Trust Funds (or the “Trust Funds”). The Trust Funds are joint labor-
9 management trust funds created under Section 302(c) of the Labor Management Relations Act
10 (“the Act”), 29 U.S.C. § 186(c) and the Employee Retirement Income Security Act of 1974
11 (ERISA), 29 U.S.C. §1001, *et seq.* as amended.

12 7. The Plaintiffs are the Boards of Trustees of the Trust Funds. The Boards of
13 Trustees of the Trust Funds are governing bodies and the fiduciaries of the Trust Funds as
14 defined by ERISA §402(a)(1), 29 U.S.C. § 1102(a)(1).

15 8. Bigfoot Plumbing, LLC (hereafter “Bigfoot”), a Washington State limited
16 liability company, is engaged in business within the jurisdiction of the court, and such
17 business affects commerce within the meaning of Section 301(a) of the Act.

18 9. Bigfoot’s business office is located at 815 Industry Drive, Tukwila,
19 Washington, 98188.

20 10. Defendant Dayton Matthew Dennison is “President” and the registered agent
21 for Bigfoot.

COMPLAINT– 3

1 11. Mr. Dennison and the marital community composed of Mr. Dennison and
2 Jane Doe Dennison are Washington residents (collectively referred to as “Dennisons”).

3 12. ERISA §3(21)(A) includes in the definition of a fiduciary anyone who
4 “exercises any discretionary authority or discretionary control respecting management of such
5 plan or exercises any authority or control respecting management or disposition of its assets.”
6 29 U.S.C. 1002(21)(A).

7 13. The definition of “plan assets” includes “amounts that a participant has
8 withheld from his wages by an employer, for contribution to the plan, as of the earliest date on
9 which such contributions can be reasonably segregated from the employer’s general assets.”
10 29 CFR §2510.3-102.

11 14. ERISA §409, 29 U.S.C. 1109, provides that suit may be brought for breach of
12 fiduciary duty and the fiduciary shall be personally liable for any breach.

13 15. At all times material to this proceeding, Defendants Bigfoot and the Dennisons
14 withheld employee-side wages from Bigfoot’s employees’ paychecks. The Court has
15 jurisdiction over these claims pursuant to ERISA §409, 29 U.S.C. § 1109, and ERISA §§ 502
16 and 515, 29 USC §§ 1132 and 1145.

17 16. Jurisdiction over all ERISA claims and venue are conferred on this court by the
18 Trust Agreements and Section 502 of ERISA, 29 U.S.C. §1132.

19 17. Because Plaintiffs’ state law claims against Defendants Bigfoot and the
20 Dennisons arise out of a common nucleus of operative facts, this Court also has supplemental
21 jurisdiction over the Plaintiffs’ state law claims against these Defendants pursuant to
22 28 U.S.C. § 1367.

COMPLAINT- 4

3400 423 tj051204

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II. FACTS

18. On November 9, 2017, Dayton M. Dennison (“Matt Dennison”, identifying himself as President of Bigfoot), executed a Compliance Agreement with the Plumbing and Pipefitting Industry for the Jurisdictional Area of United Association Local 32 (“Local 32”).

See Exhibit A.

19. By signing the Compliance Agreement, Bigfoot agreed to be subject to the Labor/Management Agreement between Local 32 and the Mechanical Contractors Association Western Washington (“Agreement”).

20. Under the terms of the Agreement, Bigfoot agreed to pay monthly fringe benefits to the Trust Funds for each hour of covered work performed by its employees. The amount per hour and the basis for the contributions (i.e. per hour worked or per hour compensated) are set forth in the Agreement.

21. The Trust Funds are third party beneficiaries under the terms of the Labor Agreement.

22. Pursuant to the terms of the Agreement, Bigfoot agreed to pay all fringe benefit contributions to the designated administration offices. The administration offices collect the fringe benefit contributions and other amounts specified in the Agreement.

23. Bigfoot is required to provide its monthly reports and contributions payments to the administration offices no later than the 15th of each month (or 18th of the month if hand delivered by noon on the 18th) following the month in which the hours were worked. Bigfoot also agreed to pay the Trust Funds liquidated damages, interest, attorney fees, and costs of collection in the event it became delinquent delinquency.

COMPLAINT- 5

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1 24. As a signatory employer to the Agreement, Bigfoot agreed to the terms of the
 2 (i) Seattle Area Plumbing and Pipefitting Industry Health and Welfare Trust; (ii) Seattle Area
 3 Plumbing & Pipefitting Industry Journeymen and Apprentice Training Trust; (iii) Western
 4 Washington U.A. Supplemental Pension Plan; (iv) Washington State Plumbing & Pipefitting
 5 Industry Pension Plan; (v) Plumbers & Pipefitters International Training Fund; and (vi)
 6 Plumbers & Pipefitters National Pension Fund.

7 25. Bigfoot's obligations to the Seattle Area Health and Welfare Trust are set forth
 8 in Article IX, Sections 2 – 6 of the *Trust Agreement Governing the Seattle Health & Welfare*
 9 *Trust Fund*, dated September 22, 1995. Under the Seattle Area Health and Welfare Trust,
 10 Bigfoot agreed to, among other things:

- 11 ▪ Submit all contributions by the due date specified in the underlying
 12 collective bargaining agreement or special agreement;
- 13 ▪ Payment of liquidated damages of ten percent (10%) of the amount of
 14 contributions which are owed or one-hundred dollars (\$100.00),
 15 whichever is greater, if suit is filed, liquidated damages in the amount
 16 of twenty percent (20%) of the contributions owed, with interest on
 17 delinquent contributions at twelve percent (12%) per annum from the
 18 date due until paid; and
- 19 ▪ Payment of the reasonable attorney fees (with a minimum of \$100.00),
 20 audit costs, and costs of collection.

21 26. Bigfoot's obligations to the Training Trust are set forth in Article IX, Sections
 22 1 – 6 of the *Trust Agreement Governing the Seattle Area Plumbing and Pipefitting Industry*
 23 *Journeymen and Apprenticeship Training Trust*, effective April 28, 1986. Under the Training
 24 Trust, Bigfoot agreed to among other things:

- 25 ▪ Submit all contributions by the due date specified in the underlying
 26 collective bargaining agreement or special agreement;
- 27 ▪ Payment of liquidated damages of twenty percent (20%) of the amount
 28 of contributions which are owed or fifty dollars (\$50.00), whichever is
 29 greater;

COMPLAINT – 6

- 1 ▪ Interest at twelve percent (12%) per annum on delinquent contributions
- 2 from the due date until paid; and
- 3 ▪ Payment for reasonable attorney fees (with a minimum of \$25.00),
- 4 audit costs and all reasonable costs of collection.

5 27. Bigfoot's obligations to the Western Washington U.A. Supplemental Pension
 6 Plan are set forth on Article IX, Sections 2 – 6 of the *Trust Agreement Governing the Western*
 7 *Washington U.A. Supplemental Pension Trust*, dated November 18, 1997. Under the U.A.
 8 Supplemental Pension Plan, Bigfoot agreed to, among other things:

- 9 ▪ Submit all contributions by the due date specified in the underlying
- 10 collective bargaining agreement or special agreement;
- 11 ▪ Payment of liquidated damages of ten percent (10%) of the amount of
- 12 contributions which are owed or one-hundred dollars (\$100.00),
- 13 whichever is greater, if suit is filed, liquidated damages in the amount
- 14 of twenty percent (20%) of the contributions owed, with interest on
- 15 delinquent contributions at twelve percent (12%) per annum from the
- 16 date due until paid; and
- 17 ▪ Payment of reasonable attorney fees (with a minimum of \$100.00),
- 18 audit costs, and all reasonable costs of collection.

19 28. Bigfoots's obligations to the Washington State Plumbing & Pipefitting
 20 Industry Pension Plan are set forth in Article IV, Sections c – e of the *Revised Trust*
 21 *Agreement for the Washington State Plumbing and Pipefitting Industry Pension Plan*,
 22 effective as of December 31, 1961, restated as of September 18, 2012. Under the Washington
 23 State Plumbing and Pipefitting Industry Pension Plan, Bigfoot agreed to, among other things:

- 24 ▪ Submit all contributions by the due date in the collective bargaining
- 25 agreement or the twentieth day of the following month in which hours
- 26 are worked;
- 27 ▪ Payment of liquidated damages of twenty (20%) percent of the
- 28 contributions not paid when due;
- 29 ▪ Payment of interest at the maximum rate allowed by law; and
- 30 ▪ Payment of reasonable attorneys' fees, costs of payroll audits and all
- 31 other expenses incurred in connection with delinquency.

32 COMPLAINT – 7

33 3400 423 tj051204

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1 29. Bigfoot's obligations to the International Training Fund are set forth in Article
 2 VI, Section 6 of the *Restated Trust Agreement of the International Training Fund*, dated
 3 December 2, 2014. Under the ITF, Bigfoot agreed to among other things:

4 ■ Submit its payments and reporting forms by the fifteenth (15th) day
 5 following the end of each calendar month;
 6 ■ Payment of liquidated damages of twenty percent (20%) of the amount
 7 due, plus interest from the due date to the date of payment at a rate of
 twelve percent (12%) per annum; or double interest as provided in
 ERISA; and
 8 ■ Payment of reasonable attorney fees and costs of collection.

9 30. Bigfoot's obligations to the National Pension Fund are set forth in Article VI,
 10 Section 5 of the *Restated Agreement and Declaration of Trust of the Plumbers and Pipefitters*
 11 *National Pension Fund*, incorporating Amendments through May 16, 2001. Under the NPF,
 Bigfoot agreed to among other things:

12 ■ Submit its payments and reporting forms by the twentieth (20th) day
 13 following the end of each calendar month, or if earlier, on the date
 provided for in the Collective Bargaining Agreement;
 14 ■ Payment of liquidated damages of ten percent (10%) of the amount
 15 due, plus interest from the due date to the date of payment at a rate of
 eighteen percent (18%) per annum; and
 ■ Payment of reasonable attorney fees, accountant fees, court costs.

16 31. Following execution of the Compliance Agreement, Bigfoot hired workers and
 17 performed work subject to the scope of the Agreement but failed to comply with the monthly
 18 reporting and payment of contributions to the plaintiff Trust Funds.

19 32. Bigfoot has failed to timely report and pay its contributions to the Trust Funds.

20 33. Despite demand, Bigfoot has failed and/or refused to report and pay its
 21 contributions to the Trust Funds for the period of August 2018 through current.

22 34. As of the date of this complaint, Bigfoot owes the Trust Funds an unknown

COMPLAINT- 8

1 amount in employee benefit contributions for the delinquent months of August 2018 through
2 current.

3 35. As of the date of this complaint, Bigfoot owes the Trust Funds an unknown
4 amount of liquidated damages, prejudgment interest, attorney fees and costs of collection for
5 the delinquent months of August 2018 through current. The total amount will be proven on
6 motions or at trial.

7 **III. CAUSES OF ACTION**

8 **First Cause of Action**
9 **(Breach of Collective Bargaining Agreement/Trust Agreement)**

10 36. The Trust Funds re-allege the facts set forth in paragraphs 1 through 35 above
11 as if stated fully herein, and further allege as follows:

12 37. Bigfoot's failure to properly report and pay fringe benefit contributions
13 constitutes breach of the terms of the Agreement executed by Bigfoot, to which the Trust
14 Funds are beneficiaries. Bigfoot's failure to properly report and pay fringe benefit
15 contributions constitutes breaches of the Trust Agreements, the terms of which Bigfoot agreed
16 to when it signed the Agreement.

17 38. Bigfoot's failure to report and pay fringe benefit contributions constitutes a
18 violation of §502 and §515 ERISA, codified at 29 U.S.C. §1132 and §1145.

19 39. As a result of Bigfoot's breach, the Trust Funds have been damaged in an
20 unknown amount plus liquidated damages, additional prejudgment interest, attorney fees and
21 costs of collection for the delinquent period of August 2018 through current. The total
22 amounts due will be proven on motions or at trial.

COMPLAINT- 9

3400 423 tj051204

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40. Under the terms of the Agreement, the Trust Agreements and ERISA section 502(g)(2), Bigfoot is obligated to pay liquidated damages, interest, reasonable attorney's fees, and costs and expenses of suit.

Second Cause of Action (Breach of Fiduciary Duty under ERISA)

41. The Trust Funds re-allege the facts set forth in paragraphs 1 through 40 above as if stated fully herein, and further allege as follows:

42. Defendant Dayton Matthew Dennison is responsible for the reporting and payment of fringe benefit contributions to the Seattle Area Plumbing & Pipefitting Trust Funds.

43. Defendant Dayton Matthew Dennison, for purposes of ERISA, is a fiduciary of trust fund assets, because he exerted control over *employee* deductions when he withheld money from his employees' paychecks for payment to the Seattle Area Plumbing & Pipefitting Trust Funds, but failed to remit those amounts.

44. The definition of "plan assets" includes "amounts that a participant has withheld from his wages by an employer, for contribution to the plan, as of the earliest date on which such contributions can be reasonably segregated from the employer's general assets."

45. Defendant Dayton Matthew Dennison failed to turn over trust fund assets, consisting of employees' vacation pay and any employee 401k withholding to the Trust Funds.

46. Defendant Dayton Matthew Dennison's failure to remit trust fund assets is a

COMPLAINT- 10

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breach of fiduciary duty under ERISA, and has damaged Trust Funds in an unknown amount to be determined at trial, plus prejudgment interest, liquidated damages, costs and attorney fees.

47. Defendant Dayton Matthew Dennison, and the marital community, are jointly and severally liable with Bigfoot for all amounts withheld from Bigfoot's employees' paychecks and not remitted to the Trust Funds.

Third Cause of Action

(Personal Liability for Conversion of Vacation Contributions and Assessment Fund)

48. The Trust Funds re-allege the facts set forth in paragraphs 1 through 47 above as if stated fully herein, and further allege as follows:

49. Pursuant to the terms of the Agreement, vacation, assessment check off, and dues check off contributions are withheld from the employees' paychecks.

50. Pursuant to the terms of the Agreement, Bigfoot is required to remit the withheld vacation, assessment check off, and dues check off contributions to the Trust Funds.

51. Defendant Dayton Matthew Dennison is President of Bigfoot for the relevant period of September 2018 through current.

52. Defendants Dayton Matthew Dennison, the marital community, and Bigfoot interfered with the Trust Funds' possession of the employees' vacation, assessment check off, and dues check off when they failed to remit those withheld funds to the Trust Funds.

53. Defendants Dayton Matthew Dennison and Bigfoot intentionally interfered with the Trust Funds' possession of the employees' vacation, assessment check off, and dues check off by refusing to remit them to the Trust Funds to date.

COMPLAINT- 11

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54. As a result of Dayton Matthew Dennison's and Bigfoot's refusal to remit Bigfoot's employees' vacation, assessment check off, and dues check off withheld from employees' paychecks, the Trust Funds have suffered a loss in an unknown amount to be determined at trial, plus pre and post-judgment interest, liquidated damages, costs and attorney fees.

55. Defendant Dayton Matthew Dennison and the marital community, are personally, and jointly and severally liable for conversion of vacation, assessment check off, and dues check off contributions owed to the Trust Funds in an amount to be determined at trial, plus pre and post-judgment interest, liquidated damages, costs and attorney fees.

Fourth Cause of Action (Conversion of Wages)

56. The Trust Funds re-allege the facts set forth in paragraphs 1 through 55 above as if stated fully herein, and further allege as follows:

57. Beginning September 2018 through current, Bigfoot and Dayton Matthew Dennison knowingly took possession of the vacation, assessment check off, and dues check off contributions withheld from the paychecks of Bigfoot's employees.

58. Dayton Matthew Dennison, and the marital community, are personally and jointly and severally liable for conversion of wages withheld from Bigfoot's employees' paychecks in an amount to be determined at trial, plus pre and post-judgment interest, liquidated damages, costs and attorney fees.

59. Dayton Matthew Dennison, the marital community, and Bigfoot are jointly and severally liable for conversion of wages withheld from Bigfoot's employees' paychecks in an

COMPLAINT- 12

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1 amount to be determined at trial.

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**Fifth Cause of Action
(Unjust Enrichment)**

4 60. The Trust Funds re-allege the facts set forth in paragraphs 1 through 59 above
5 as if stated fully herein, and further allege as follows:

6 61. By receiving the withheld wages from Bigfoot's employees' paychecks,
7 Dayton Matthew Dennison, the marital community, and Bigfoot obtained a benefit from the
8 Trust Funds and from Bigfoot's employees.

9 62. Dayton Matthew Dennison, the marital community, and Bigfoot had
10 knowledge of this benefit.

11 63. Dayton Matthew Dennison, the marital community, and Bigfoot knew or
12 should have known that he was not the intended recipient of the withheld vacation,
13 assessment check off, and dues check off contributions and that said benefits should have
14 been remitted to the Trust Funds for payment to the intended recipients.

15 64. The acceptance and retention by Bigfoot and Dayton Matthew Dennison, and
16 the marital community, of the benefit under such circumstances was such that it was
17 inequitable for Bigfoot and Dayton Matthew Dennison, and the marital community, to retain
18 the benefit and Bigfoot and/or Dayton Matthew Dennison, and the marital community have
19 been unjustly enriched.

20 65. Dayton Matthew Dennison, and the marital community are personally and
21 jointly and severally liable to the Trust Funds for unjust enrichment in an amount to be
22 determined at trial.

COMPLAINT- 13

3400 423 tj051204

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IV. PRAYER FOR RELIEF

The Plaintiffs Seattle Area Plumbing and Pipefitting Trust Funds respectfully request the Court grant the following:

- A. Judgment against Bigfoot Plumbing, LLC, in an amount to be determined at trial or motion, for past-due and delinquent fringe benefit and other contributions owed by Bigfoot Plumbing, LLC through the date of judgment pursuant to the terms of the labor and trust agreements to which Bigfoot Plumbing, LLC is a party;
- B. Judgment against Bigfoot Plumbing, LLC, in an amount to be determined at trial representing liquidated damages, interest, and costs of collection owed by Bigfoot Plumbing, LLC through the date of judgment pursuant to the terms of the labor and trust agreements to which Bigfoot Plumbing, LLC is a party;
- C. Judgment against Dayton Matthew Dennison, and the marital community, in a joint and several amount to be determined at trial or on motion, representing vacation, assessment check off, and dues check off contributions deducted from employee paychecks and not remitted to the Trust Funds, plus liquidated damages, interest, and attorney fees and costs of collection through the date of judgment;
- D. An award of attorney fees, plus costs of collection, as authorized by the labor and trust agreements to which Bigfoot Plumbing, LLC is a party, and as authorized under ERISA; and
- E. Any other such relief under federal law or as is just and equitable.

DATED this 10th day of October, 2018.

/s/ Noelle E. Dwarzski
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COMPLAINT- 14

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